

**Chesapeake Bay Local Assistance Board  
Local Program Review for the Southern Area  
Department of Conservation and Recreation  
101 N. 14<sup>th</sup> Street, 17<sup>th</sup> Floor, James Monroe Building  
Richmond, Virginia  
Tuesday, February 15, 2005**

**D R A F T M I N U T E S**

SARC Members Present

Ms. Sue H. Fitz-Hugh  
Ms. Beverly Harper  
Mr. Michael V. Rodriguez

Mr. David C. Froggatt  
Ms. Gale A. Roberts  
Mr. Donald W. Davis (ex-officio chair)

DCR Staff Present

Joseph H. Maroon, Director  
C. Scott Crafton, Acting Director, Division of Chesapeake Bay Local Assistance  
Ms. Martha Little, Chief of Environmental Planning  
Ms. Shawn Smith, Principal Environmental Planner  
Mr. Jakob Helmboldt, Senior Environmental Planner  
Mr. Ryan Link, Principal Environmental Planner  
Mr. Brad Belo, Senior Environmental Planner  
Mr. Michael Fletcher, Director of Development

Local Government Officials Present

*City of Richmond*

Debra Byrd

*Isle of Wight*

Pamela Shaw

*City of Hampton*

Sally Andrews, Assistant City Attorney  
Keith Cannady, Chief City Planner  
James Peterson, Assistant City Manager

*Northampton County*

Timothy R. Holloway

*Town of Exmore*

Wayne McCoy  
Katrina Hickman

*Chesterfield County*

Joan Salvati

Others

Roger Chaffe, Office of the Attorney General  
Ken Dierks, Private Citizen, James City County  
Robert Duckett, Peninsula Housing and Builders Association  
Seth Sanders, Williamsburg Builders Group  
Pat O'Hare, Home Builders Association of Virginia

Call to Order and Opening Remarks

Mr. Davis called the meeting order and asked for the calling of the role. A quorum was declared present. Mr. Davis asked Mr. Maroon or Mr. Crafton to offer any opening remarks.

Mr. Maroon had no opening comments.

Mr. Crafton said that DCR has received a grant from the DEQ Coastal Water program to develop a field guide for perennial water body determination. This will be developed into a field manual for local program staff.

Questions raised at the Board retreat are being addressed by staff with a number of white papers that will be presented at the March Board meeting.

Mr. Crafton reminded the members that staff attempted to develop Residential IDA Guidance for localities. This guidance was reviewed by the stakeholder committee and the Policy Committee. There was consensus among the stakeholder group on the language staff proposed. However, when this was presented Mr. Chaffe, he felt there were significant enough differences with the regulations that he advised waiting until the regulations are revised to approve the guidance. Staff continues to work on the language of the document and hopes to bring this idea back in a different form for Board consideration in the near future.

Mr. Crafton provided copies of the Tributary Strategies document.

Mr. Crafton noted that the permanent classified position of Director of the Division of Chesapeake Bay Local Assistance has been advertised to the general public. DCR hopes to fill that position in the near future.

Mr. Crafton introduced Daniel BenYisrael, a new planner on staff.

Mr. Davis said that the Board would be reconstituting its Policy Committee within the next month. The committee will bring in stakeholders to help develop guidance on various matters.

Local Program Reviews: Phase I

*Town of Onley*

Mr. Crafton gave the update on the Town of Onley. He said that Mr. Chaffe has spoken with the town attorney. It is hoped that the town has adopted an ordinance by this point, but there has been difficulty communicating because there is no full time staff there.

No action was required.

*Town of Exmore*

Ms. Smith gave the report for the Town of Exmore.

The Town's revised program was found inconsistent by the Board on March 22, 2004, and the Board established September 30, 2004 as the deadline for the Town to address the fifteen consistency recommendations. The Department met with Town officials in March prior to the Board meeting, and provided specific recommendations to the Town's consultant in April. Staff received proposed revisions from the consultant in May, and provided some additional comments and recommendations for revisions. After May of 2004, staff was not afforded the opportunity to review draft language as the proposed ordinance revisions moved through the town's adoption process. As a result, the Town adopted a revised ordinance that did not address all 15 consistency items, but did address eight of the required items.

The recommendation that the Town's program remain inconsistent sparked an open dialogue with the Town and it became apparent that the omissions of the remaining items were an error, since the town intended to address all 15 consistency items. The Town staff has prepared draft language to address the remaining seven consistency conditions. Ms. Smith said that she had reviewed the language, made some recommendations for further amendments, and was told these were incorporated into another draft. The Town must go through Northampton County's joint public hearing process, and given the noticing requirements, will likely adopt the revisions by the first Wednesday in March.

Staff recommendation remains that the SARC find the town's program inconsistent, since they have not yet adopted further revisions. If the Town adopts the required revisions in the beginning of March, staff will ask the Town waive their 20-day notice requirement, and the report can be revised for the Board meeting. Provided all proposed changes have been met, staff could then recommend that the Town be found consistent. The reasoning

for recommending that the Town be found inconsistent by the Committee is to ensure that the town is treated the same as other localities and so that should the Town not adopt the revisions as planned, the Board would be in a position to take further action necessary to achieve compliance.

Ms. Smith noted that Wayne McCoy, the Town's consultant and Katrina Hickman from the Town staff were present. Mr. Davis asked them for comments.

Ms. Hickman said that the Town had addressed 13 of the 15 recommendations but that the wording was not sufficient. She also said that the revised language was sent to staff via email in October, but that evidently the email was not received by staff. She said that the Town has scheduled a public hearing for March 2 with the Northampton County Joint Public Meeting to adopt the changes.

Mr. Davis asked Ms. Smith to clarify when she received the information.

Ms. Smith said that she had received the revised program information in December and had reviewed it and developed a staff report noting that seven of the 15 consistency items had not been addressed. She said that she had emailed the draft report to the Town and Mr. McCoy in early January because she wanted to give the Town the opportunity to make the necessary changes prior to this Committee meeting, if possible. She noted that staff recognized the difficulty the Town has in adopting revisions due to the joint public hearing process with Northampton County. She stated that she did send a draft staff report as soon as she knew that the program would still be recommended to be inconsistent.

Mr. Davis asked for the Town timeline.

Mr. McCoy said the timeline is immediate and noted that he had comments to offer.

He said that he considered it important to address the Board. He said that he believed there were some errors of facts that needed to be clarified.

He said that the report indicated that there were two perennial streams within the Town of Exmore, based on the information on the USGS map. He said that Nassawadox Creek appears to be a perennial stream, but that this is actually an impoundment. He noted that the SCS soil map showed this as an intermittent stream.

Mr. McCoy said that after the finding of inconsistency, there was a meeting. He noted that Ms. Hickman is one of two employees of the Town of Exmore. He said that the Town agreed with the recommendations. He said that the characterization that the Town did not want to do a CBPA was not an accurate characterization. He said that the Town desires to meet the criteria, but not at the cost of being over-regulated.

Mr. McCoy said the Town believed they had made the necessary changes. He asked that based on that, the Board set aside the staff recommendation and find the Town consistent, pending the adoption of the changes at the public meeting.

Mr. Davis asked Ms. Smith for further comment.

Ms. Smith said that much of the information provided by Mr. McCoy was dated. She said that as a staff member she was charged with seeing that the Town addressed the 15 recommendations in the Board's resolution of March 22, 2004, and further that the resolution was very specific in requiring all 15 consistency items to be addressed by September 30, 2004. She stated that the Town had adequately addressed eight of the original 15 consistency recommendations, and that she had no option but to uphold the Board's March 22, 2004 resolution in recommending that the Town's program continue to be found inconsistent.

She said that she had reviewed the Town's proposed revisions, and that with the exception of the definition of water body with perennial flow, all remaining consistency issues were addressed. She said that if the Town adopts the proposed changes on March 2<sup>nd</sup> she will get the information as soon as possible and will amend the staff report for the March meeting to recommend the program be found consistent.

Mr. Davis recommended that if the Town takes appropriate action on March 2<sup>nd</sup> that this information be provided to staff as soon as possible in order that the staff report might be amended.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Town of Exmore's amended Phase I program be found inconsistent and that the Director of the Department of Conservation and Recreation be authorized to take appropriate administrative and legal actions as outline under § 10.1-2103 of the Act and § 9 VAC10-20-260 of the Regulations to compel the Town of Exmore to adopt a consistent Phase I program; however, if the Town takes appropriate action at the March 2<sup>nd</sup> meeting, the Board should take that into consideration for the final determination.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

### *Isle of Wight County*

Mr. Link provided the report for Isle of Wight County.

On June 21, 2004 the Chesapeake Bay Local Assistance Board found Isle of Wight County's Chesapeake Bay Preservation Ordinance consistent with the Act and Regulations subject to the condition that Isle of Wight County adequately address one condition as recommended by DCR staff no later than December 31, 2004.

That condition recommended that the County amend their ordinance to include reference to E&S control requirements as required by the Regulations.

Staff is of the opinion that the County has adequately addressed all recommendations and recommends that Isle of Wight County be found consistent with the Act and Regulations.

Mr. Link recognized Pam Shaw from the County.

Ms. Shaw thanked the Board and staff and noted that the County is supportive of the Bay Act.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that Isle of Wight County's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

### *City of Portsmouth*

Mr. Link gave the report for the City of Portsmouth. He noted that no one from the City was present at the meeting.

On June 21, 2004 the CBLAB found the City of Portsmouth's Chesapeake Bay Preservation Ordinance consistent with the Act and Regulations subject to the condition that the City adequately address two conditions as recommended by DCR staff no later than December 31, 2004.

Those two conditions recommended that the City amend their ordinance to include reference to "reasonable sight lines", and that the City include "land disturbance" as a trigger for the completion of a WQIA.

Staff is of the opinion that the City has adequately addressed all recommendations and recommends that the City of Portsmouth be found consistent with the Act and Regulations.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Portsmouth's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

*City of Virginia Beach*

Mr. Link presented the report for the City of Virginia Beach. He noted that no one was present from the City.

On June 21, 2004 the CBLAB found the City of Virginia Beach's Chesapeake Bay Preservation Ordinance consistent with the Act and Regulations subject to the condition that the City adequately address six conditions as recommended by DCR staff no later than December 31, 2004.

Staff is of the opinion that the City has adequately addressed all recommendations and recommends that the City of Virginia Beach be found consistent with the Act and Regulations.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Virginia Beach's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Fitz-Hugh.

DISCUSSION: None.

VOTE: Motion carried unanimously.

*Chesterfield County*

Mr. Helmboldt presented the report for Chesterfield County. He noted that Joan Salvati, Water Quality Administrator for Chesterfield County, was present at the meeting.



Chesterfield County's Phase I ordinance was first adopted by the County Board of Supervisors on October 10, 1990 and was found consistent on March 27, 1991. The Board most recently found the County's Phase I program consistent on December 9, 2002 after the County adopted their Watershed Management Master Plan and Maintenance Program, resulting in a major program modification.

The County's attempt to adopt the current revised Regulations has run into numerous roadblocks over the course of the last 12+ months. Concerns over the amount of increased RPA throughout the County resulting from onsite perennial stream determinations, takings of property, the misconception that the revisions required an additional 100-foot buffer, and other concerns voiced by citizens and members of the Board of Supervisors resulted in the County deferring action on adoption of the revisions.

After several meetings and discussions with Joe Maroon, Scott Crafton, and Division staff, the Board of Supervisors adopted a revised Bay Act ordinance on November 23, 2004, incorporating most of the required changes to the Regulations.

However, several revisions to the County's ordinance are not consistent with the Regulations, and staff feels they have the potential to significantly affect the manner in which the County administers its Bay Act program.

Mr. Helmboldt said that he spoke with Ms. Salvati about the Recommendations, and several appear to be the result of misinterpretation of code requirements. These can be easily remedied by modifying the language to articulate the requirements more clearly. He noted that Ms. Salvati could address in greater detail some of these issues and provide clarification as to the intent as written into their ordinance.

The County's General Performance Criteria were revised to include the changes to the Regulations pertaining to agricultural uses, however the County's ordinance contains a clause exempting agricultural uses from the requirements of the General Performance Criteria in the Resource Management Area (RMA). The section does state that an agricultural assessment is required, but staff's concern is that the exemption could be interpreted to exempt agricultural uses from this requirement or exempt them from the General Performance Criteria when building agriculture-related structures (such as barns, storage facilities, etc).

Recommendation:

For consistency with § 9VAC 10-20-120 9 of the Regulations, amend § 19-233(h) of the County's General Performance Criteria by removing the exemption to the General Performance Criteria for agricultural lands and activities in the RMA.

The County did not amend two definitions to reflect the changes made to the Regulations and failed to include a definition that was added at the time of the revisions. The County retained the previous definitions for both *Highly Erodible Soils* and *Highly Permeable Soils* and failed to add the definition for *Public Road*.



Recommendation:

For consistency with § 9VAC 10-20-40 of the Regulations, amend § 19-301 to include the revised definitions of *Highly Erodible Soils* and *Highly Permeable Soils* and add the definition for *Public Road*.

The County's revised General Performance Criteria provide for maintenance agreements when BMPs are utilized. A clause in the ordinance states that "apartment developments outside the Swift Creek Reservoir Watershed are excluded" from the requirement. Ms. Salvati clarified that the exclusion refers to the requirement for a surety bond, not the maintenance agreement itself. In light of this clarification, the recommendation would simply require that the County clearly articulate this in the ordinance.

Recommendation:

For consistency with § 9VAC 10-20-120 3 of the Regulations, amend § 19-233(h) by eliminating the exemption from BMP maintenance agreements for apartment developments outside of the Swift Creek Reservoir Watershed.

The County failed to make one of the required changes to its ordinance relating to administrative waivers for the expansion of nonconforming principal structures. The County did not stipulate that the administrative review of such structures does not apply to accessory structures as required under § 10-20-150 C 4 of the Regulations.

Recommendation:

For consistency with § 9VAC 10-20-150 C 4 of the Regulations, amend § 19-236 of the County's ordinance, Non-conforming uses, vested rights and other exceptions, to stipulate that administrative waivers for the expansion of nonconforming structures shall apply only to principal structures and shall not be applied to requests for the expansion of accessory structures in the RPA.

The County's revised ordinance includes revisions allowing administrative waivers to permit encroachments into the landward 50 feet of the RPA buffer on pre-Bay Act lots. However, the final subsection of this division [Section 19-232(d) 1 d] outlines a process whereby a written request for an exception to the permitted encroachment criteria is to be made to the director of environmental engineering. Staff is concerned that this last subdivision either explicitly or implicitly permits the director of environmental engineering to make decisions on request for exceptions to the permitted encroachment criteria. Section 9 VAC 10-20-150 C of the Regulations are clear in that any request for an exception to any RPA criteria is to be processed through the formal exception process. Therefore, the County must delete Section 19-232(d) 1 d for consistency with the Regulations.

Recommendation:

For consistency with § 9VAC 10-20-150 C of the Regulations, delete § 19-232(d) 1 d.

The County's revised ordinance included a provision for the granting of exceptions through an administrative process for conditions that are not addressed in any way by the Regulations and for which the purpose is not clear.

Ms. Salvati said that this apparently arose as a result of the County attorney meeting with the individual members of the County's Board of Supervisors to address their concerns as they related to their perceived complications arising from the site-specific determinations of perennality.

Recommendation:

For consistency with § 9VAC 10-20-130 4 of the Regulations, amend § 19-232(d)3 by eliminating this subsection altogether, which reads:

*When the application of the RPA buffer area would result in the loss of a buildable area on a lot or parcel created as the result of bankruptcy, condemnation or threat of condemnation, judicial partition or judicial action relating to a decedent's estate, encroachments into the RPA buffer area may be allowed through an administrative process in accordance with the requirements of 19-232(d)(2)(b), (c) and (d).*

Mr. Chaffe said that he had spoken with the County Attorney and noted that the County is dealing with parcels created by judicial decisions. However, he noted that this is not specifically addressed in the regulations and stated that he does not feel it is inconsistent with state law. He recommended that the County be allowed to retain the language.

The County's revised ordinance now requires site-specific determination of Chesapeake Bay Preservation Areas and refinement of RPA boundaries based upon such determinations. The County is beginning the process of conducting a county-wide mapping of all perennial waterbodies and RPA features. The County's ordinance contains a provision whereby site-specific determination requirements shall no longer be required upon completion of their county-wide determination. However, the County must amend the language to ensure that the actual boundaries of the RPA are still determined onsite, even in the absence of the need for determination of perennality.

Recommendation:

For consistency with § 9VAC 10-20-105 of the Regulations, amend § 19-231(a) of the County's ordinance, Site-specific refinements of Chesapeake Bay Area boundaries and boundary adjustments, to require that specific onsite boundaries of the RPA are established and adjusted based upon site-specific determination of perennality, regardless of whether such determination is conducted by the individual or the County.

The County's revised ordinance has been updated to incorporate changes to the Resource Protection Area requirements. This section of the ordinance addressing exemptions for roads and driveways not exempted under § 9VAC 10-20-150 does not stipulate that plan

reviews for these exemptions are done in coordination with the County's site plan, subdivision plan and/or plan of development approvals.

Ms. Salvati has noted that in some cases, (notably single-family homes) there may be no formal site plan, and review may not be conducted through an actual Plan Of Development (POD) process. She noted that an improvement sketch might be required for something such as an added drive, but that it would not fall under an actual POD or subdivision plan, and as such would not be subjected to such review.

Mr. Helmboldt said that given Ms. Salvati's observations, staff is of the opinion that it is still necessary to conduct such reviews in a comprehensive manner so that such exemptions are reviewed in conjunction with the other conditions present for any given site.

**Recommendation:**

For consistency with § 9VAC 10-20-130 1 d of the Regulations, amend § 19-232(a)(4)d of the County's ordinance, by requiring that plan review of all exempt roads and driveways not exempted under § 9VAC 10-20-150 of the Regulations is coordinated with the County's site plan, subdivision plan and/or plan of development approval process.

The County's revised ordinance properly provides for silvicultural exemptions. However, the County has made the stipulation that such an exemption shall not apply to activities on agriculturally zoned land which is not used directly for agricultural uses. The Regulations provide separate exemptions for both silvicultural and agricultural uses and should apply solely to their respective activities.

Ms. Salvati informed staff that the intent was to eliminate the loophole whereby exemptions were taken when the land in question was not actually being used for the intended silvicultural purpose.

**Recommendation:**

For consistency with § 9VAC 10-20-120 4 of the Regulations, amend § 19-234(b) by eliminating the clause referencing silvicultural exemptions for non-agricultural land disturbing activities on agriculturally zoned land.

Staff recommends that Chesterfield County's revised Bay Act Ordinance be found inconsistent with the Act and Regulations as a result of the significance of the outstanding requirements for full consistency.

It is staff's recommendation that the County be required to undertake and complete the nine recommendations no later than September 30, 2005.

Mr. Davis asked Ms. Salvati for further comments.

Ms. Salvati thanked the members and staff for their patience with the County. She noted that the political climate had made it difficult to adopt the necessary changes.

She noted that there were many discussions with the agricultural community regarding the agricultural exemption. She said that it was never the intent of staff to exempt agricultural uses from doing the conservation assessments. Ms. Salvati also noted that the requirement for the assessment is included in the ordinance and said that the County Attorney, Steve Micas, does not feel that the exemption from the performance criteria could be used to exempt agricultural uses from the requirement for an assessment.

Ms. Salvati commented on each of the recommendations. She noted that on recommendation three, exempting apartment uses does not exempt them from BMP maintenance requirements, rather it exempts them from the requirement for a surety bond for the maintenance. Ms. Salvati stated that clarification of that detail in the ordinance should not present any problems.

She said regarding recommendation seven, with respect to the boundary adjustments, there is a clause in there based on the regulations.

Regarding the silvicultural exemption, she said that this has been a concern for some time. In Chesterfield County there are many parcels that are agriculturally zoned but do not have agricultural or silvicultural uses on the land. They have had the exemption applied. The attempt here was to tighten the loophole.

She asked that the Board consider finding the program provisionally consistent with a deadline to work out the final adjustments necessary.

MOTION: Ms. Roberts moved that the Southern Area Review Committee Recommend to the Chesapeake Bay Local Assistance Board that recommendation #6 in the staff report be deleted and that Chesterfield County's Phase I program be found consistent with §10.1-2103 of the Act and § 9 VAC 10-20-250 of the Regulations subject to the condition that the County undertake and complete recommendations as revised, in the staff report no later than September 30, 2005.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

*City of Richmond*

Mr. Helmboldt presented the report for the City of Richmond. He recognized, Debbie Byrd, Permits & Engineering Services Administrator for the City of Richmond.

The City's Phase I ordinance was first adopted by the City Council on November 11, 1991 and was found consistent on June 25, 1993.

As a result of concerns that the City had regarding the revised Regulations and the potential legal implications, specifically those relating to litigation which the City was engaged in over the course of the past couple of years, the City chose to defer adoption of a revised Bay Act ordinance until the litigation was completed and upon review of their concerns.

City staff met with Joe Maroon, Scott Crafton, Roger Chaffe and staff members on several occasions in an attempt to address the City's concerns.

Richmond City Council adopted their revised Bay Act ordinance on December 13, 2004, incorporating most of the required changes to the Regulations.

The City of Richmond has approximately 450-600 homes that still utilize septic systems. As the systems fail, the City requires that homeowners connect to the municipal sanitary sewer system. The existing systems are tracked by the City Health Department, and pump-out notices are sent out to homeowners as needed. However, the City failed to retain the five-year pump-out requirement for onsite sewage disposal systems. Given that the City still has a substantial number of onsite systems, most of which are old and susceptible to failure, the City needs to retain the pump-out requirement in their ordinance.

Recommendation:

For consistency with § 9VAC 10-20-120 7 a of the Regulations, amend § 50-331 of the City's General Performance Criteria by adding the requirement for five-year pump-out of onsite septic systems. The City may add the option of inspection in lieu of pump-out if they desire.

The City's revised ordinance does not specify their original program adoption date when addressing the provision for existing nonconforming uses and structures. The City defines such nonconformities as "*any structure in existence on the effective date of this ordinance.*" As written, the City's ordinance could be interpreted as defining nonconformities as existing uses predating adoption of their ordinance revisions on December 31, 2004, especially given that the City created a stand-alone ordinance for the purpose of these revisions.

Recommendation:

For consistency with § 9VAC10-20-150 A 1 of the Regulations, amend § 50-340(a)(1) by changing "*any structure in existence on the effective date of this ordinance*" to specify the City's original program adoption date of November 11, 1991 or any subsequent amendments as the date by which nonconformities are determined to have existed. The revised text should read:

*The City may permit the continued use, but not necessarily the expansion, of any structure in existence on ~~the effective date~~ November 11, 1991, or which exists at the time of any amendment to this article ~~of this ordinance~~.*

The City included in their revised ordinance the provisions for the administrative processing of waivers for the expansion of nonconforming principal structures. However, the City erroneously referenced the applicable review process as being contained in a section of their ordinance that does not exist. In order for the review process to be accurately identified and carried out, the City must amend this section of their ordinance in order to be consistent with the Regulations.

Recommendation:

For consistency with § 9VAC 10-20-150 C 4 of the Regulations, amend § 50-340(c)(5) of the City's ordinance to properly identify and reference the administrative review process applicable to expansion of existing, legal principal structures within the City's revised ordinance. The City must amend this section by striking the reference to subsection (d) and properly cite subsection (c)(2).

Staff recommends that Richmond's revised Bay Act Ordinance be found consistent with three conditions. It is staff's recommendation that the City be required to undertake and complete the three recommendations no later than September 30, 2005.

Mr. Davis asked Ms. Byrd for comments.

Ms. Byrd said that the City intends to comply with the recommendations. She noted that the first recommendation would be included in the Health Department regulations.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the City of Richmond's revised program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City undertake and complete the three (3) recommendations in the staff report no later than September 30, 2005.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

*City of Hampton*

Mr. Davis recognized Sally Andrews, Deputy City Attorney for the City of Hampton.



Ms. Andrews said that the City sent a letter dated February 10, 2005 and requested that the Southern Area Review Committee consider delaying action until the next Review Committee meeting. She noted that the Assistant City Manager James Peterson and Keith Cannady were present with her.

She noted that there had been some significant political changes in the recent weeks in the City. Because of those changes, City staff has not had an adequate amount of time to consult with City Council.

She said that staff plan is to immediately meet with the Mayor and Council in early March and that they would like to follow that up with a meeting with DCR staff.

Ms. Andrews noted there were several areas of concern that they would like to discuss with DCR staff for clarification.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee table discussion on the City of Hampton program until the May 3, 2005 meeting.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Chaffe offered to work with the City Attorney regarding legal matters.

Mr. Davis asked that the staff presentation prepared by Mr. Belo be presented at the March Board meeting. He recommended that someone from the City of Hampton be present, but clarified that no action would be taken at that meeting.

#### Local Program Reviews: Phase II- Comprehensive Plans

There were no Phase II Comprehensive Plans for review.

#### Local Program Reviews: Compliance Evaluation

##### *Northampton County*

Ms. Smith presented the report for Northampton County. She noted that Tim Holloway Environmental Planner from Northampton County was present at the meeting.

The compliance evaluation process for Northampton County was begun last year. Three meetings were held with County staff, on October 1, 2004, November 10, 2004 and



finally, the site visits were held on November 30, 2004. These meetings helped to complete the Checklist, review site plan files, and conduct site visits.

The report summarizes the findings of the compliance evaluation, checklists, site plan reviews and field investigations, noting that, in general, the County is enforcing the requirements of its Bay Act program in an appropriate manner, with staff properly trained in erosion and sediment control requirements. General development activities in the County are outlined, with single-family homes, and commercial/industrial sites in areas in or near existing towns comprising the dominant types of development. Site plans and field visits were reviewed for development occurring along portions of the shoreline in the County where residential development is occurring and areas near or within incorporated towns. Development in the County has been mostly single-family residential, but larger subdivisions and commercial development pressures are increasing. The County's amended Bay Act program was found consistent by the Board at the June 2004 meeting, and the County has always been cooperative in its Bay program enforcement.

Based on the compliance evaluation process, the Department has six recommendations for full compliance; including one to ensure that a WQIA is submitted for all land disturbances in the RPA; one relating to updating and using the County's existing BMP database or developing a new database to track and maintain BMPs; and another recommendation on implementing and enforcing the County's septic pump-out requirement. The County still tracks pump-outs as they are submitted by haulers, but has not sent out notices to tank owners on the need to pump for a number of years.

The County's BZA is the body that considers formal RPA exception requests. One of the issues noted during the compliance evaluation is that the reports prepared by staff do not fully address the required findings and impacts to the RPA. Therefore, another recommendation relates to the formal RPA exception process and the need for the County to develop reports, forms or some other mechanism to ensure that the BZA has complete information on the impacts, and appropriate mitigation when considering these requests.

County staff does a good job working with individual property owners on staking the limits of RPAs on lots prior to development. However, on one site with an RPA, the stakes were not noticeable and land disturbance had occurred within the RPA. This particular site was a converted farm field on a subdivision that had been approved prior to the revision of the County's ordinance. But to prevent other inadvertent disturbances from happening in the future, the Department recommends that the County place more noticeable fencing, staking or other mechanism to ensure that the limits of the RPA are clearly marked onsite during construction.

The final recommendation relates to stormwater management and the need for the County to ensure that all water quality BMPs are selected, sited and installed in accordance with the requirements of the Virginia Stormwater Handbook. County staff recognizes the need for additional training in stormwater management, and Division staff will work with other Department divisions to help provide training.

Mr. Holloway said that he was in agreement with the recommendations and many were just a matter of wording changes. He noted that some of the delays had been due to a gap in employees. He acknowledged that the County needed to work on the database tracking.

MOTION: Ms. Harper moved that the Southern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board find that certain aspects of Northampton County's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that Northampton County undertake and complete the six recommendations contained in the staff report no later than March 31, 2006.

SECOND: Ms. Roberts.

DISCUSSION: None.

VOTE: Motion carried unanimously.

#### Other Business

Mr. Crafton reviewed with the members a memorandum regarding the review of James City County's proposed Threshold Modifications for Perennial Flow Field Indicator Protocols. A copy of this memorandum is available from DCR.

After reviewing the County's supporting documentation and discussing the changes with County staff, the Department concluded that the County's perennial stream identification threshold modifications are consistent with the Chesapeake Bay Preservation Act and Regulations.

Mr. Crafton noted that interests from James City County were in attendance to appeal that decision.

Robert Duckett with the Peninsula Housing and Builders Association said that the association believed this action was premature. He noted that the association does not see the need for counties to rush ahead and revise scoring methods.

He said the association would urge the Department to defer action on this request. He noted that one of the approved scoring methods is currently undergoing revisions.

Mr. Duckett said that the County did not have enough science to confirm the need for changes in their scoring method. He said a statistical analysis would be helpful in making the determination, but that the Department currently only has a partial picture.

Pat O'Hare, of the Home Builders Association of Virginia said that he was a member of the committee that helped to develop the guidance on determination of perennial streams. He noted in comparison to the Fairfax County survey of streams, James City County had only surveyed one watershed.

Mr. O'Hare said the data are not sufficient to justify the change in the North Carolina Protocol. Further, he said that it was premature in time, as the guidance has only been available for about a year and a half.

Mr. O'Hare said that his association would support the suspension of the approval until further data is received.

Ken Dierks an Engineer with Lee Environmental Group said that action taken in James City County will establish a threshold of evidence regarding how counties revise their scoring methods. He said that with the scoring systems there is a high degree of variability, based on the amount of field experience.

He noted that he anticipated there will be inconsistencies between localities. He said that the County should concentrate efforts based on the North Carolina plan. There is a great deal of variability in terms of expertise.

Mr. Maroon asked for clarification of the local process for developing this request.

Mr. Duckett said there was a wide variety of opinion among the local group regarding what level of scores would be accurate. He noted that the basis of the scoring method was one study on the Powhatan Creek watershed.

Mr. Belo said that in their review the Department staff was impressed with the process used by the County to amend the perennial stream identification threshold numbers. The study was based on input from a stakeholder group which included private sector consultants and scientists. Their experience was combined with the information provided in the watershed study and a report by Professor Johnson from William and Mary.

Mr. Belo clarified that the North Carolina protocol is being reorganized, but not drastically changed.

Mr. Duckett noted that changes in the North Carolina plan were being made at the local level in James City County.

Seth Sanders with the Williamsburg Builders Association said that a number of the members of the Association were members of the stakeholders group. He said that the association would not agree with the idea that there was complete consensus among the stakeholder group.

He said that there were ongoing examples in other areas of the County where the scoring is not being adequately reflected. He also said that the Association felt it was too early to make these revisions.

Mr. Davis noted a concern that the Board did not appear to have an established policy on how to handle these determinations.

Mr. Crafton noted that staff was acting on previous instructions as outlined in the *Determinations of Water Bodies with Perennial Flow* (September 2003).

Mr. Maroon noted a concern that DCR has approved the James City Protocol in a letter sent out earlier in the week. He said that he would prefer to have the option for James City County to present their program to the Board. He noted that this was the first protocol modification to be submitted and that it was important to review and act properly.

Mr. Davis said that he understood staff was acting as they believed to be appropriate.

Mr. Maroon asked for clarification from Mr. Chaffe.

Mr. Chaffe said that the Board could suspend this action and ask that James City County present their request to the Board.

Mr. Maroon indicated that, based on this discussion, staff would contact James City County and notify them that the approval of the protocol would be suspended pending further review by the Board and staff.

### Adjourn

There being no further business, the meeting was adjourned.